

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

JEREMIAH ORDONEZ,

Petitioner,

v.

No. 17-CV-00996-KG-SCY

KEN SMITH,

Respondent.

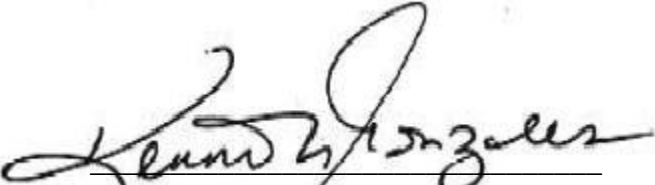
**ORDER OF DISMISSAL WITHOUT PREJUDICE**

This matter is before the Court, *sua sponte*. On December 4, 2017, the Court denied Petitioner Jeremiah Ordonez's Prisoner's Motion And Affidavit For Leave To Proceed Pursuant to 28 U.S.C. § 1915 and ordered Petitioner to "submit the \$5 filing fee, or show cause for his failure to do so, within thirty (30) days" of the date of entry of the Court's order. (Doc. 5). Petitioner failed to submit the filing fee or otherwise respond to the Court's order and, therefore, on January 26, 2018, the Court ordered Petitioner to "show cause why his Petition Under 28 U.S.C. § 2254 For Writ Of Habeas Corpus By A Person In State Custody should not be dismissed." (Doc. 6). Petitioner's show cause response was due on or before Monday, February 26, 2018, but as of this date, Petitioner has failed to respond to the Court's Order To Show Cause.

In light of the foregoing, Petitioner's § 2254 petition will be dismissed without prejudice pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute this action or comply with the Court's orders. *See* Fed. R. Civ. P. 41(b) ("If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it."); *Olsen v. Mapes*, 333 F.3d 1199, 1204 n.3 (10th Cir. 2003) ("Although the language of Rule 41(b) requires that the defendant file a motion to dismiss, the Rule has long been interpreted to permit courts to

dismiss actions sua sponte for a plaintiff's failure to prosecute or comply with the rules of civil procedure or court's orders.").

IT IS THEREFORE ORDERED that Petitioner's Petition Under 28 U.S.C. § 2254 For Writ Of Habeas Corpus By A Person In State Custody (Doc. 1) is DISMISSED without prejudice and judgment will be entered.



UNITED STATES DISTRICT JUDGE